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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,767	11/19/2003	Robert Allen Janssen	19,393	6181

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KIMBERLY-CLARK WORLDWIDE, INC.  
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EXAMINER
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BRUENJES, CHRISTOPHER P

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 12/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/716,767

Applicant(s)

JANSSEN, ROBERT ALLEN

Examiner

Christopher P. Bruenjes

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 20040213, 20050208, 2118105, 2118168
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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**DETAILED ACTION*****Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claims 1-26 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14 of U.S. Patent No. 6,972,148 in view of Katz et al (USPN 5,073,365).

The claims of US'148 teach an elastomeric article comprising a substrate body including an elastomeric material

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and a plurality of beads comprising a polymer having a vinyl group being covalently bonded to the elastomeric material or donning layer overlying the elastomeric material (see claim 1). The vinyl group is selected from the group consisting of a carbon-carbon vinyl group or an acrylate group (see claim 3). The article comprises a surfactant coating on the elastomeric material or incorporated into the donning layer by overlying the donning layer (claims 12 and 14). The polymeric material forming the donning layer is a hydrogel (claim 13). The donning layer comprises from about 0.01 to 30 percent beads (claim 9). The elastomeric article is a glove (claim 11).

The claims of US'148 fail to teach the beads being porous and a treatment impregnated into the pores so that the treatment is time releasable to the environment. However, Katz et al teach that spherical beads used to provide lubricity and donning to an elastomeric glove are made from microscopic porous spherical beads in order to store and diffuse adjuvants to the user's skin (col.1, 1.64 - col.2, 1.14). Specifically adjuvants such as emollients and moisturizers are stored in the porous beads so that the beads or particles function as controlled delivery systems so that the release occurs in a sustained manner, providing a continuous fresh supply to the user's skin (col.1, 1.44-61 and col.2, 1.31-53). Katz et al teach that the

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pore size is between 0.003 and 1 micron and that the specific size is determined depending on the chemical characteristics of the polymers used as well as the diffusive characteristics of the adjuvant retained inside (col.3, 1.21-35). Katz et al further teach one specific example of the adjuvant is polyethylene glycol (col.5, 1.48-50). Note the limitations of claims 7-12 are process limitations in product claims and are given little patentable weight. Articles are defined by structure alone, and although all limitations are considered method limitations are only given patentable weight in article claims insofar as they provide structure to the article claimed. In this case, whether the porous beads are impregnated prior to or after bonding the beads to the elastomeric material or whether the treatment is applied by spraying, dipping, or coating does not provide any additional structure to the claimed invention. Katz et al also teach that the porosity of the beads, insofar as the pores of the beads are filled with adjuvant, fall within the claimed range of 20 to 50 percent of the entire volume of the bead (col.7, 1.28-30). One of ordinary skill in the art would have recognized that US'148 and Katz et al are analogous insofar as both references are concerned with forming elastomeric gloves having a donning layer.

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Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to form the spherical beads taught in the claims of US'148 from porous spherical beads containing treatment or adjuvant within the pores as taught in Katz et al, in order to provide controlled delivery of adjuvants such as emollients or moisturizers to the glove user's hands, as taught by Katz et al.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

2. Claims 1, 4-17, and 19-24 are rejected under 35 U.S.C.

103(a) as being unpatentable over Wang et al (USPN 6,638,587) in view of Katz et al (USPN 5,073,365).

Regarding claims 1 and 16, Wang et al teach an elastomeric glove comprising a substrate body including an elastomeric material and a plurality of particles or beads bonded to the elastomeric material (see abstract). The particles or beads are formed of silicone and are covalently bonded to the elastomeric material insofar as the silicone is covalently bonded to the silicone-modified polymer forming a donning layer, which in turn is covalently bonded to the elastomeric material (col.5, 1.63 - col.6, 1.10). Regarding claim 15, the glove comprises a surfactant coating on the elastomeric material because the surfactant is incorporated into the coating layer containing the particles or beads (col.8, 1.44-50). Regarding claim 17, Wang et al teach the elastomeric glove comprising the substrate body taught above, and a donning layer of silicon modified polymers containing a plurality of beads covalently bonded to the donning layer via the silicon functional group of the silicon modified polymer. Regarding claim 21, a surfactant is incorporated into the donning layer (col.8, 1.44-50). Regarding claims 22-24, the

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donning layer comprises the particles or beads in a ratio of polymer to particle ranging from 10/1 to 1/1, which at least overlaps the claimed amounts.

Wang et al fail to teach the beads being porous and a treatment impregnated into the pores so that the treatment is time releasable to the environment. However, Katz et al teach that spherical beads or particles used to provide lubricity and donning to an elastomeric glove are made from microscopic porous spherical beads in order to store and diffuse adjuvants to the user's skin (col.1, 1.64 - col.2, 1.14). Specifically, adjuvants such as emollients and moisturizers are stored in the porous beads so that the beads or particles function as controlled delivery systems so that the release occurs in a sustained manner, providing a continuous fresh supply to the user's skin (col.1, 1.44-61 and col.2, 1.31-53). Katz et al teach that the pore size is between 0.003 and 1 micron and that the specific size is determined depending on the chemical characteristics of the polymers used as well as the diffusive characteristics of the adjuvant retained inside (col.3, 1.21-35). Katz et al further teach one specific example of the adjuvant is polyethylene glycol (col.5, 1.48-50). Note the limitations of claims 7-12 are process limitations in product claims and are given little patentable weight. Articles are



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defined by structure alone, and although all limitations are considered method limitations are only given patentable weight in article claims insofar as they provide structure to the article claimed. In this case, whether the porous beads are impregnated prior to or after bonding the beads to the elastomeric material or whether the treatment is applied by spraying, dipping, or coating does not provide any additional structure to the claimed invention. Katz et al also teach that the porosity of the beads insofar, as the pores of the beads are filled with adjuvant, falls within the claimed range of 20 to 50 percent of the entire volume of the bead (col.7, 1.28-30). One of ordinary skill in the art would have recognized that Wang et al and Katz et al are analogous insofar as both references are concerned with forming elastomeric gloves having a donning layer.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to form the spherical particles or beads taught in Wang et al from porous spherical beads containing treatment or adjuvants within the pores as taught in Katz et al, in order to provide controlled delivery of adjuvants such as emollients or moisturizers to the glove user's hands, as taught by Katz et al.

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3. Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsuura et al (USPN 6,641,879).

Regarding claims 1 and 16, Matsuura et al teach an elastomeric glove comprising a substrate body including an elastomeric material such as acrylic resin, and a plurality of micro-particles or beads to improve the lubricity of the internal surface of the glove (see abstract). Regarding claims 2 and 3, the beads are formed of methacrylic resin such as methyl methacrylate, which is a vinyl group such as an acrylate group (col.9, 1.43-45). Regarding claim 15, the glove comprises a surfactant coating on the elastomeric material because the surfactant is incorporated into the coating layer containing the particles or beads (col.9, 1.36-37). Regarding claim 17, the elastomeric glove comprises a substrate body having a first surface and a donning layer overlying the first surface comprising a polymeric material containing a plurality of particles or beads (see abstract). Note the limitation in claims 1 and 17 that the beads are covalently bonded to either the donning layer or elastomeric body is taught in Matsuura et al by the fact that both the elastomeric body and donning layer including the particles or beads are formed of acrylic resin and are crosslinked after being brought into contact with each other. Therefore, the crosslinking of the acrylic resins would

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form covalent bonds between the beads and the donning layer and the donning layer and the elastomeric body. Thus, because all three components are covalently bonded the beads are at least indirectly covalently bonded to the elastomeric body. Regarding claim 18, the polymeric material forming the donning layer is a hydrogel as hydrogels are described in the instant specification (col.6, 1.10-22). The particles or beads are present in the donning layer in an amount that falls within the claimed ranges claimed in claims 22-24, especially since 8% is about 10 mass percent (col.4, 1.30-35). Regarding claims 25 and 26, the beads are formed of methacrylic resin such as methyl methacrylate, which is a vinyl group such as an acrylate group (col.9, 1.43-45).

Matsuura et al fail to teach the beads being porous and a treatment impregnated into the pores so that the treatment is time releasable to the environment. However, Katz et al teach that spherical beads or particles used to provide lubricity and donning to an elastomeric glove are made from microscopic porous spherical beads in order to store and diffuse adjuvants to the user's skin (col.1, 1.64 - col.2, 1.14). Specifically, adjuvants such as emollients and moisturizers are stored in the porous beads so that the beads or particles function as controlled delivery systems so that the release occurs in a

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sustained manner, providing a continuous fresh supply to the user's skin (col.1, 1.44-61 and col.2, 1.31-53). Katz et al teach that the pore size is between 0.003 and 1 micron and that the specific size is determined depending on the chemical characteristics of the polymers used as well as the diffusive characteristics of the adjuvant retained inside (col.3, 1.21-35). Katz et al further teach one specific example of the adjuvant is polyethylene glycol (col.5, 1.48-50). Note the limitations of claims 7-12 are process limitations in product claims and are given little patentable weight. Articles are defined by structure alone, and although all limitations are considered method limitations are only given patentable weight in article claims insofar as they provide structure to the article claimed. In this case, whether the porous beads are impregnated prior to or after bonding the beads to the elastomeric material or whether the treatment is applied by spraying, dipping, or coating does not provide any additional structure to the claimed invention. Katz et al also teach that the porosity of the beads insofar, as the pores of the beads are filled with adjuvant, falls within the claimed range of 20 to 50 percent of the entire volume of the bead (col.7, 1.28-30). One of ordinary skill in the art would have recognized that Matsuura et al and Katz et al are analogous insofar as both references

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are concerned with forming elastomeric gloves having a donning layer.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to form the spherical particles or beads taught in Matsuura et al from porous spherical beads containing treatment or adjuvants within the pores as taught in Katz et al, in order to provide controlled delivery of adjuvants such as emollients or moisturizers to the glove user's hands, as taught by Katz et al.

#### ***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

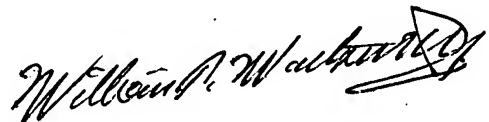
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher P Bruenjes  
Examiner  
Art Unit 1772

CPB *CPB*  
December 7, 2005



**WILLIAM P. WATKINS III  
PRIMARY EXAMINER**